IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 625 of 2004
With
CRIMINAL REVISION APPLICATION No. 626 of 2004
To
CRIMINAL REVISION APPLICATION No. 627 of 2004
With
CRIMINAL REVISION APPLICATION No. 629 of 2004
To
CRIMINAL REVISION APPLICATION No. 630 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AMRISH DEVNARAYAN RAJPUT - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

==========

Appearance :
MR JR DAVE for Applicant(s) : 1,
Mr.MC Sood, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 09/08/2005

ORAL COMMON JUDGMENT

1. The present Group of Revision Applications are preferred by different petitioners accused against

the common order of rejection of an application praying discharge under section 227 of CrPC by ld. Addl. Sessions Judge, Court No.8, City Sessions Court, Ahmedabad dated 31.08.2004 in Sessions Case No. 167/2004. The petitioners of all the Revision Applications are shown as an accused in the crime registered with Meghaninagar Police Station being CR.No. I.25/2004 for the offences punishable under various sections of Indian Penal code. Petitioner of Cri. Rev. Application No. 625/2004 Amrish Devnarayan Rajput -original accused No.3 has preferred application exh. 12 praying discharge. Similarly, the petitioner of Cri. Revision Application No. 626/2004 Shri Anilbhai Chimanbhai Kella- original accused No.6 has preferred application exh.13 praying discharge, petitioner of Cri. Revision Application No. 627/2004 Bharat Hashmukhlal Shah-original accused No.7 has preferred application exh.13 praying discharge, petitioner of Cri. Rev. Application No. 629/2004 Kishorbhai Harjibhai Parmar- original accused No.4 has preferred application exh.12 praying discharge and the petitioner of Cri. Rev. Application No.630/2004 Chandulal Amthalal Patadia -original

accused No.2 has preferred application exh.12 praying discharge. All of them have prayed that they should be discharged from the offence punishable under section 397 of IPC. Ld. Counsel Mr. JR Dave appears for the petitioner of Cri. Rev. Application No. 625/2004. Ld. Counsel Mr. Yogesh S.Lakhani appears for the petitioner of Cri. Rev. Application No. 626/2004 and ld. Counsel Mr.Ashish M.Dagli appears for the petitioner of Cri. Rev. application No. 627/2004. Ld. Counsel Mr. SV Raju appears for the petitioner of Cri. Rev. Application No.629/2004 and ld. Counsel Mr. Chetan K.Pandya appears for the petitioner of Cri. Rev. Application No.630/2004. Ld. Counsel appearing for the petitioners in this group of Revision Applications have taken this Court through the nature of allegations made in the complaint as well as through the papers of investigation received by them along with chargesheet. However, ultimately, all of them have concentrated their arguments that the ld. Trial Judge at least ought to have discharged the petitioners accused from the charge for the offence punishable under section 397 of IPC because there is

no element of evidence, even prima facie, to show that the offence under section 397 of IPC was ever intended or has been committed by any of the petitioners accused. Ld. Counsel Mr. Chetan K.Pandya appearing for the petitioner of Cri. Rev. Application No. 630/2004 has submitted that the petitioner has expired pending Cri. Rev.Application No.630/2004 and so the present Cri. Rev. Application as well as entire trial against the petitioner accused Chandulal Patadia stands abated. Ld. APP Mr. Sood has not disputed the death of the petitioner Chandulal Patadia. Hence, Cri. Rev. Application No.630/2004 as well as entire trial against deceased petitioner Chandulal Patadia -original accused No.2 stands abated.

2. Ld. APP Mr. NC Sood appearing for the State has argued at length and has taken this Court through the case pleaded by the prosecution and gravity of the offence committed in a court compound and the sensitivity attached to the crime and submitted that there is no merit in any of the Revision Applications and accused persons have been rightly asked by the

ld. Trial Judge to face the charge for which they have been chargesheeted by the investigating agency including the charge for the offence punishable under section 397 of IPC.

3. I have gone through the order under challenge passed by the ld. Trial Judge and in response to the query raised by the Court, it is jointly submitted that all these Revision Applications, if are disposed of by the common judgment as the points at issue involved is similar and they are arising out of the same order and that too arising out of one crime i.e. CR No. I.25/2004 registered with Meghaninagar Police Station. Hence, this group of Revision Applications have been heard jointly and are being disposed of by this Common Judgment.

4. To appreciate the rival contentions placed before the Court, it is necessary to state the facts in brief available from the papers of investigation and the contents of the complaint filed. That on 29th January, 2004, a complaint is given by one Mr. Rajiv Yashvant Patel, Reporter of “Aaj Tak” inter alia

alleging that when on 29.01.2004 he went to take coverage of the order of suspension of the Metropolitan Magistrate Shri M.S.Brahmbhatt at Meghaninagar Compound, in his Indica Car along with cameraman Kausharkhan and driver Rupsingh Rathod and there he was assaulted. To unreveal to the public at large the alleged scam going on in the Court of Meghaninagar Court Compound of issuance of the warrant, a trap case was maneuvered by the reporter of Zee News Channel and in wake of issuance of warrants allegedly against the President of India, the then chief Justice of India etc. the said news had been broadly publicized. In wake of the issuance of the said warrants, the concerned Magistrate was suspended by the Hon'ble High Court and on 29th January, 2004, the reporter Mr. Janak Dave in his Indica car with the one cameraman Mr. Subodh Vyas complainant of I.CR No.26/2004 had once again gone to Meghaninagar Court compound and were present at court No.10. The some and substance of both the complaints is that while the said news was being covered, a mob of about 40 to 50 advocate shad gathered, when one of them shouted “that the persons from Zee T.V. is

going, beat him". Both these persons attempted to run away. They were forcibly stopped and given kick blows and fist blows. One of the Advocates also said "Sankhla burn the camera" and that advocate had forcibly taken away the camera and broken it which was later on burnt. There were frequent references of names like Saijpal and Kanu. In an attempt to save his life, the complainant of I.CR No.26/2004 took an autorickshaw and reached to the office of the Police Commissioner. The complaint had been given by Mr. Vyas which was registered as I.CR No.26/2004 on the very same day which was later on numbered as criminal Case No. 515/04 where the chargesheet had been laid for the offences under sections 143, 147, 149, 120(b), 201, 397, 323 and 435 of the I.P.C. Similarly, the complaint lodged by the present complainant also came to be registered as I.CR No.25/2004 with Meghaninagar Police Station for the offences punishable under sections 143, 147, 149, 397, 435, 332, 353, 186, 201, 120-B, 249-B and 506(1) of Indian Penal code.

5. On receipt of the complaint, Investigating Agency started taking immediate action. It emerges

from record that the accused persons were initially granted advance bail and after their formal arrest, they have been enlarged on bail by ld. Metropolitan Magistrate. After investigation, all the seven accused came to be chargesheeted for various offences under IPC including the offence punishable under section 397 of IPC. Except the offence punishable under section 397 of IPC, all other offences are triable by ld. Magistrate. Before the ld. Addl. Sessions Judge, two fold arguments were made on behalf of the accused persons. Firstly, it was submitted that the accused are praying discharge from the offence punishable under section 397 of IPC and the Court should hold that the investigating agency has wrongly applied in the chargesheet said section. The second argument advanced was that the accused may be permitted to reserve their right to apply for discharge even from all other offences at an appropriate stage and and when occasion arises. This second fold of argument which was placed before the ld. Addl. Sessions Judge, has not been advanced before this Court and it is jointly argued that the order passed by the ld. Addl. Sessions Judge in not

discharging the petitioners accused from the offence punishable under section 397 of IPC be quashed and it should be held that the offence punishable under section 397 of IPC is not made out and the petitioners have been wrongly chargesheeted for the said offence and the papers of Sessions case No. 167/2004 be sent to ld. Chief Metropolitan Magistrate to dispose of the criminal case in accordance with law. All the ld. Counsel appearing for the petitioners have addressed the Court. However, ld. Advocate Mr. SV Raju has made elaborate submissions on facts as well as on legal aspects.

6. Ld. Addl. Sessions Judge has discussed in detail the oral submissions made by ld. Counsel Mr. Raju as well as ld. APP appearing for the State. It is relevant to note that when application praying discharge is placed before the court, then the Court should consider following main principles:-

1. That the Judge while considering the question of framing of the charges under Section 227 of the Code has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2. Whether the materials placed before the court disclose grave suspicion against the accused which has not been properly explained,

the Court will be fully justified in framing a charge and proceedings with the trial.

3. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4. That in exercising his jurisdiction under section 227 of the code the Judge which under the present Code is a senior and experienced court can not act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving inquiry into the pros and cons of the mater and weigh the evidence as if he was conducting trial.

The above principles have been propounded by the Apex Court in the case of **Union of India v/s Prafulla Kumar Samal, (1979) 3 SCC 4.**

7. It is argued by ld. Counsel Mr. Raju that in the present case, on analysis of the facts placed by the prosecution, it is not even possible to say that this is a case of a suspicion much less grave suspicion. In absence of suspicion or grave suspicion, discharge is permissible. On the contrary, Mr. Raju has

hammered that mere suspicion or conjunctures that have been drawn by the investigating agency, the accused should not be asked to face the trial of a serious charge like the offence punishable under section 397 of IPC. According to Mr. Raju, even in cases where two views are possible, then only one view that no case is made out for the offence punishable under section 397 of IPC should be given weightage and preference and ld. Addl. Sessions Judge has failed in doing so. Mr. Raju has taken me through relevant para of the decision of the Apex Court in the case of Prafulla Kumar (supra) and this Court would like to reproduce the same:-

> “..... in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. “

8. It is true that while dealing with an application under section 227 of CrPC, the Court should not make any attempt to evaluate the evidence

and is not supposed to consider the probable defence plea. The papers of investigation should be read as they are. Act of weighing the evidence is legally permissible after conclusion of trial. However, the totality emerging from the papers of investigation itself and stand taken by the complainant as well as prosecution witnesses should be kept in the centre and this would need discreet type of inquiry and some detailed study of the case papers submitted along with the chargesheet. The case of the prosecution is not only the complaint, but the entire story emerging from the papers of investigation including the Chalan-Report submitted under section 173(2) of CrPC so the accused can have a gist of the allegations or incriminating circumstances which the prosecution contemplates to bring against them before the court on conduction of the trial. According to Mr. Raju, rejection of the application has resulted into glaring injustice and the accused are now being asked to face the trial of a serious offence though basic ingredients for constitution of the offence punishable under section 397 of IPC are not emerging from the facts alleged by the prosecution and when

the petitioners are able to convince the Court that there is an element of injustice, then it should be held that the Lower Court had erred in not transmitting the same into the substantive justice. Ld. APP Mr. Sood placing reliance on the decision in the case of **Om Wati v/s State, 2001 SCC (Cri.) 685 ((2001)4 SCC 333),** has submitted that the order passed by the ld. Addl. Sessions Judge is a reasoned order and the application praying discharge has been dealt with by applying logic and law and, therefore, this court, in exercise of revisional jurisdiction, should not interfere with the findings. No reasons are required to be recorded when the charges are framed against the accused persons, but when the ld. Addl. Sessions Judge was asked to decide the application praying discharge under section 227 of CrPC, the Court merely has to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that the prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of section 228 of the Code. According to ld. APP Mr.

Sood, it is statutory obligation of the High court not to interfere at the initial stage of framing of charge merely on hypothesis, imagination and far-fetched reasons which n law amount to interdicting the trial against the accused persons. The Apex Court has observed in the case of Om Wati (supra) that “self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled-for and unjustified litigation under the cloak of technicalities of law.” In the cited decision, the Apex Court rejected the application praying discharge merely on account of observations and opinion incorporated in Post Mortem Report. Accused were chargesheeted for the offence punishable under section 302 of IPC. There was evidence otherwise admissible under section 32 of Indian Evidence Act and other documents including the inquest report allegedly disclosing the infliction of the injuries on the person of the deceased that has resulted into death. The High court, while

discharging the accused for the offence punishable under section 302 of IPC, passed cryptic and non-speaking order reversing the finding recorded by the ld. Sessions Judge. The Apex Court observed that the High Court ought not to have interfered at the initial stage of framing of charges merely on hypothesis, imagination and far-fetched reasons. As observed above, the Apex Court also found that the attempt made by the accused was nothing but an attempt to protract the trial and such unscrupulous litigants should not be encouraged from protracting the trial.

9. It is settled legal position that before framing of charge in terms of section 228 of CrPC, the Presiding Judge of the Court if asked, is supposed to pass a reasoned order while dealing with the application under section 227 of the Code and in a case where it emerges that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in a cross-examination or rebutted by the defence side, can not show that the accused committed

a particular crime, then and then alone the Court can discharge the accused from that crime. It would not be logical or proper to say that the allegations are sufficient to frame the charge for certain offences and the accused should not mechanically be asked to face the charge of a much graver offence falling in similar category of the case punishable under a particular chapter of IPC or the offence punishable under any other Special Statute. The accused can positively pray that out of various charges, basic ingredients of a particular offence are missing and he should not be convicted even at the end of the trial for that particular offence and, therefore, he should be discharged from at least that particular charge or offence.

10. I am satisfied that the present Cri. Rev. Applications are not preferred by any unscrupulous litigants or with a view to protract the trial otherwise the petitioners could not have restricted their prayer when the matter was heard by the ld. Addl. Sessions Judge. While arguing for the petitioners, Mr. Raju, in response to the query

raised by the Court, has fairly accepted that the say of the petitioners is that section 397 of IPC has been wrongly applied by the investigating agency and ld. Trial Judge ought to have discharged the accused from that offence directing the ld. Chief Metropolitan Magistrate to try the accused for rest of the offences. Ratio of the decision in the case of **Kanti Bhadra Shah v/s State of West Bengal (2000)1 SCC 722,** would not help the State because it is possible from the facts to infer that any decoity as defined under section 391 of IPC could be said to have been committed in the alleged incident, because to prove the element of decoity, the prosecution is supposed to establish following facts:-

1. involvement of five or more persons as an accused in the commission of the offence,

2. commission of the offence or an attempt to commit the offence must be conjoint;

So, the intention of five or more persons/accused should be of committing a robbery or to make an attempt to commit robbery. Narration of incident, even as per the compliant and story unfolded further by the witnesses of the prosecution

whose statements have been recorded by the investigating officer, does not disclose that five or more persons with an intention to commit robbery have committed robbery or an attempt to commit robbery was made. It emerges that some anger against the media personnels has been expressed in a violent manner and in expressing the anger or displeasure in a violent manner, some criminal wrong, prima facie, can be said to have been committed at the spot of incident. Without entering into the merits of the evidence collected by the prosecution as to the identity and individual act of the petitioner accused, it is possible for this Court to observe that merely because total number of accused are seven, the act of snatching of a video camera or other property has been described as a robbery. No property has been recovered from any of the accused or at the instance of the accused. Gold chain allegedly snatched by one of the accused when emerges to be an act of a wrong done by an individual, prima facie, it can not be equated with conjoint criminal wrong done by a group of five or more persons. Decoity is an offence which the legislature has made punishable at four stages,

viz;

1. assembly for the purpose of committing decoity. Each of the person so assembled, is guilty under section 402 of IPC;

2. making preparation for committing decoity. Any one who makes preparation for committing decoity is punishable under section 399 of IPC;

3. an attempt by five or more persons (including the persons who aids such an attempt) to commit decoity; and

4. actual commission of robbery by five or more persons (including those who aid such commission).

So, the accused persons named in the complaint or by any of the witnesses whose statements have been recorded, can be held guilty for the wrong individually committed by them, but that by itself would not be sufficient to infer in absence of any positive evidence that the group of persons had ever intended robbery or attempted robbery. Some witnesses were initially brow-beaten. Cameraman Kausharkhan and Driver Roopsingh Rathod were undisputedly in the court compound and had seen a mob of advocates. These two witnesses were informed by one another news Reporter Shri Ketan Trivedi as to the tense situation. Cameraman was of Zee TV and he was beaten and his camera was set at fire and, therefore, this

Kaushar Khan and Roopsingh Rathod were asked to leave the court compound immediately by Shri Ketan Trivedi. It is the case of the prosecution that crowd geraoved the motorcar of one news channel “Aajtak” and thereafter they were pulled out of the motorcar by the mob and were given blows of fists and kicks by Advocates. Video camera was snatched from the hands of cameraman Kausharkhan who was sitting in the motorcar and the allegation is that same was broken to pieces by advocates. Video Cassettes lying in the motorcar were also burnt. Forcible pulling out a person from the motorcar under some wrong belief and causing damage to the property or properties of such persons, is not equal to robbery as defined under section 390 of IPC. For our purpose, it would be relevant to quote definition of robbery as defined under section 390 of IPC, which reads as under:-

> “390.**Robbery**.--In all robbery there is either theft or extortion.
>
> **When theft is robbery.**- Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful constraint.

> **When extortion is robbery**.- Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted."

11. The story unfolded by the prosecution witnesses and the complainant, does not fall in the definition of "robbery" in stricto-senso. The word "wrongful restraint" used in section 339 of IPC if considered, then it emerges that abridgment of a liberty of the prosecution witnesses against their will was not with a view to commit theft or with an intention to commit theft. In the same way, the act of giving fist or kick blows by the persons present in the mob was also not in furtherance of committing theft. For the sake of arguments even if the say of the prosecution witnesses is considered as narrated by them, I am afraid it would be difficult to link the accused with crime of committing robbery. Of course, it can be argued by the prosecution that the evidence which can be said to be a strong suspicion is there on record. So, the trial Judge could have framed the charge at

the most for the offence punishable under section 392 of IPC because damage to the property or destroying the valuable articles like video camera is nothing but “mischief” of property punishable under section 427 of IPC, otherwise, each act of snatching of immovable property or properties from the victim of a crime and destruction of it would become an offence of decoity or robbery merely because in the process, the victim has sustained either physical injury or was facing threating language. What was the intention of the mob or why hit was generated amongst the advocates who had gathered in the court compound is expressly said by the complainant as well as by the witnesses examined by the prosecution. None of them have said that they have been robbed or serious offence of decoity has been committed against them. There is some strength in the arguments of ld. Counsel Mr. Raju that use of abusive language or expression of mere threats can not be equated with an attempt to commit either murder or to commit robbery. The apprehension and imagination in the mind of the complainant is not sufficient to level serious charge against the accused. On the contrary, the papers of

investigation reveals that the advocates were eager to give safe access to all including the press reporters. As per the ratio laid down by the Apex Court in the case of **State of Maharashtra v/s Priya Sharan, AIR 1977 SC 2041,** "at the stage of framing of the charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

12. As per settled legal position, ld. Addl. Sessions Judge, while framing of the charge or appreciating the application under section 227 of CrPC, has powers to shift the evidence and in "N"-number of cases instituted either under TADA or POTA or MOCA etc., the Courts are supposed to shift the facts and weigh the evidence for a limited purpose for finding out whether or not prima facie case against the accused has been made out or not. Where material placed before the court discloses grave

suspicion against the accused, which if not properly explained, then the court can frame the charge and such an action is justified. But in view of above, there is no element of even grave suspicion against the accused so far as the offence punishable under section 397 of IPC is concerned. The Court is aware that revisional Court has limited jurisdiction and the Court can not enter into erina of detailed evaluation of evidence or is not authorised to re-write the judgment making its own evaluation. But if the error committed by the Lower Court is ascertainable in evaluating the facts, then error can be corrected by revisional court especially when glaring injustice is peeing out.Of course, the ld. Addl. Sessions Judge has quoted relevant portion of the decision in the case of Om Wati (supra) and decisions referred by the Apex Court in the said judgment including the decision in the case of Kantilal Bhadra Shah (supra), but these observations are not found useful to the prosecution in light of the background of facts of the present case. The facts of all the decisions cited by ld. APP Mr. Sood and that were cited by ld. APP before ld. Addl.

Sessions Judge, are the cases where facts were materially different and in one case i.e. Om Wati (supra), the High court passed the order of discharge in a cryptic manner and the same was also a non-speaking order.

13. Examination of section 397 of IPC and all other sections connected therewith, if made, it is essential to bring home prima facie evidence whereby it can be shown that there was a commission of either robbery or decoity by the offenders who used deadly weapons or caused grievous hurt or attempted to cause death or attempted to cause grievous hurt to any person. In the present case, it is the say of the prosecution that any deadly weapon was either used or held by any of the petitioners accused. There is no case of any of the prosecution witnesses that they sustained grievous hurt. There is no case that an attempt to cause death to any person was ever made or attempt to cause grievous hurt was made with a view to either rob the victim or with a view to commit theft. Robbery is defined under section 390 of IPC, means either theft or extortion. No attempt to extort

the property was made. Each act of snatching is not extortion. Even if snatching of an immovable property is a theft in view of the definition of “theft”, but each forcible snatching is not a robbery. When in order to commit theft or attempting to carry away or in carrying away the property obtained by theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint, only then it can be said to be a robbery. So, the act of one of the accused of either snatching of a gold chain or video Camera by one other accused, appears to be an individual wrong under a mob psychology. Absence of intention of committing theft or robbery if is expressly emerging, then at least those persons could not have been even chargesheeted for the offence punishable under section 397 of IPC. It would be beneficial and relevant for the purpose of this judgment to reproduce some of the observations made by the ld. Addl. Sessions Judge in paras 17 & 18 of the impugned decision :-

> “17. To deal with firstly the motive aspect of it, it needs to be clearly and specifically

pointed out that this is no stage for the Court to go into that aspect and appreciate the averred purpose or defence of the applicant while deciding discharge application. The honesty of intention or even the most laudable object can not find place in this order if the alleged act is otherwise not permitted under the law or is construed illegal. Purity of means is equally vital or rather more important than the purity of end. Anything which needs to be done in a particular manner has to be done accordingly and no one can be permitted to transgress the limits set out by the law itself, even to meet with the averred end of nobility, except as otherwise provided under the exceptions in the Indian Penal code and that is not anyone's case but, even in that circumstance defence could not have been considered by the Court at this stage.

"18. There are certain undisputed facts as get prima facie revealed from the case papers. Firstly that there were no weapons much less deadly weapons with the applicants. Moreover, there were no serious injuries which could fall under the definition of an attempt to murder. Certificates produced on record also do not suggest that the injuries fall under the definition of grievous hurt. But, hurt is prima facie caused to the complainant and others who had gone to take the coverage of news of suspension of Metropolitan Magistrate. Complainant with camera and reporter, a valuable muddamal for shooting the event and for covering the news for the said electronics media. The video camera which is a movable property, the value of which has been estimated to nearly Rs.2.5 lacs had been taken away from the cameraman. The fact prima facie remains that the the movable video camera of the team of these electronics media "Zee News" had been snatched away and later on destroyed. It was a mob of 50 to 60 advocates which had attacked the complainant and his team, thus there is a presence of five or more persons when the

> incident took place and the complaint as well as the statement of the witnesses suggest that there was an attempt to cause grievous hurt. The camera was also taken away which is by all means a movable property of the person who was carrying it and the same was done without his consent and the said act was done to cause him a loss as can be seen prima facie from the evidence on record and whether hurt was caused or whether an attempt to cause grievous hurt was for this end or for different purpose in this transaction is surely the matter of evidence. However, from the tenor of the complaint as well as statement of the witnesses, there appears to be sufficient ground to presume that there was an attempt to cause grievous hurt while causing loss to the complainant and his team of their movable property and the same was not only done without their consent, but by beating them to the fear of grievous hurt. The incident narrated in the complaint as well as in the statement of the witnesses will not lead this Court to conclude at prima facie stage that the fear of instant death or instant hurt was fanciful. As the persons of mob were unhappy with the manner in which a coverage was done by the media of all that transpired in a judicial proceedings and the events that followed subsequently, there appears to be an intention not to let them shoot the incident of suspension of Metropolitan Magistrate and to dissuade them from so doing and that factor had driven them to manhandle the persons and to cause them hurt and also making attempts of causing grievous hurt by uttering threats and abuses."

14. The plain reading of section 397 of IPC as well as as per settled legal position, it is merely a rider to section 394 of IPC. It does not create any substantive offence. It is complimentary to section 392 and 395 of IPC which creates substantive offence.

But merely because the offence committed falls in the area which could be covered under section 392 of IPC has been committed by a mob of the persons who have been chargesheeted are more than five in number, by itself would not attract section 397 of IPC. The facts stated by each prosecution witness and the complainant should be weighed and some shifting permissible can be done. It appears that the ld. Addl. Sessions Judge, has not interpreted section 397 of IPC in its letter and spirit. When the ld. Addl. Sessions Judge has observed that “traditional concept of robbery and decoity may not be applied to the alleged acts and conduct and even if it is accepted that none of the accused were interested in causing wrongful gain to themselves with the said video camera or any valuable belongings of the complainant”, even then it is observed that there is a prima facie case and there is sufficient evidence to frame charge under section 397 of IPC. Taking out video cassettes and setting them on fire by a mob, is of mischief to the property by fire punishable under section 435 of IPC and for all these offences, the accused have been chargesheeted. It appears that

certain words uttered by some accused like “aaj to pati jaat” is again offence punishable under either section 506(1) or at the most under section 506(2) of IPC. In absence of linking evidence as to the utterance of these words with snatching of valuable properties like video camera, the accused could not have been chargesheeted for the offence punishable under section 397 of IPC.

15. The Court is not inclined to accept the submission of ld. APP Mr. Sood that standard of proof required at a final stage, is not required before taking a decision to frame charge or to discharge the accused, based on the ratio of the Apex Court propounded in the case of **Om Prakash Sharma v/s CBI, Delhi, (2000)5 SCC 679** because it is altogether on different facts and in the background of point at issue before the Apex Court under section 91 of CrPC. On the contrary, the observations made by the Apex Court in the case of **Suresh @ Pappu Kalani v/s State of Maharashtra, (2001)3 SCC 730,** would help the petitioner. In para-9 of the decision, the Apex Court has said that:-

> “9. We do not feel it necessary to repeat the discussions on the different points and the

> decisions which have been referred to in the judgment. However, we notice a few recent decisions of this court touching on the question. In the case of *State of Maharashtra v/s Priya Sharan Maharaj,* this Court referring to the case of *Niranjan Singh Karam Singh Punjabi v/s Jitendra Bhimraj Bijjaya held at (SCC p.397, para 8)* that at the stage of sections 227 & 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it can not be expected even at that initial stage to accept all that the prosecution states as the gospel truth even if it is opposed to common sense or the broad probabilities of the case. *Therefore, at the stage of framing of the charge the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."*

16. On entire reading of the bunch of papers supplied to the Court i.e. papers supplied to the accused with the chargesheet, takes this Court to a definite finding that in this set of documents , no Court can legally convict the accused or any one of them for the offences punishable under section 397 of IPC. In other words, the Court is able to arrive at a conclusion that there are no sufficient grounds for proceeding against any of the petitioners accused because there is no scope of conviction under section

397 of IPC if the story unfolded by the prosecution is assailed by the petitioner or any one of them. It is true that there is a scope of applying mind before framing of charge so far as the offence punishable under section 392 of IPC is concerned if the trial Judge is not intending to sift the evidence again. IN number of cases, gold chain snatchers are being prosecuted by the State for the offence punishable under section 379 of IPC. Even if it is found that the petitioner or any of of them have committed offence under sec.392 IPC, it would be one of the charge against the concerned accused individually.

17. For the reasons aforesaid, all the Cri. Revision Applications are hereby partly allowed. The impugned order passed by ld. Addl. Sessions Judge, Court No.8, City Sessions Court, Ahmedabad dated 31.08.2004 in Sessions Case No. 167/2004, rejecting the application under section 227 of CrPC preferred by all the petitioners accused praying discharge for the offence punishable under section 397 of IPC, is hereby quashed and set aside and such application preferred by the petitioners accused is hereby allowed and the petitioners accused are hereby discharged from the

offence punishable under section 397 of IPC. Ld. Addl. Sessions Judge is hereby directed to transfer the papers of sessions case No. 167/2004 to the Court of ld. Chief Metropolitan Magistrate, Ahmedabad who in turn shall proceed against all the accused persons for the offences for which they have been charged by the investigating agency as if they have not been chargesheeted for the offence punishable under section 397 of IPC. The petitioners shall also co-operate to the expeditious disposal of the trial and ld. Chief Metropolitan Magistrate, Ahmedabad is also directed to see that trial is expedited.Since the petitioner of Cri. Rev. Application No.630/2004 has expired, Cri. Rev. Application No.630/2004 as well as entire trial against the deceased petitioner Chandulal Patadia -original accused No.2 stands abated.

18. Rule is made absolute accordingly in each Cri. Rev. Application.

(C.K. BUCH, J)

*rawal